



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Source AV, Inc.

File: B-241155

Date: January 25, 1991

Michael R. Smith for the protester.

Clifford A. Carlisle, Esq., Department of the Air Force, for the agency.

Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of solicitation after submission of proposals is reasonable where the agency based its decision on the following considerations: (1) uncertainty regarding budgetary constraints, which would ultimately reduce the agency's requirement for the services by approximately 33 percent; (2) significant alteration of the government furnished equipment list in the solicitation; and (3) a reduction in the workload would more than likely materialize after a planned agency reorganization.

DECISION

Source AV, Inc. protests the cancellation of request for proposals (RFP) No. F42650-89-R-0263, issued by the Department of the Air Force for visual information services at Hill Air Force Base (AFB), Utah. Source contends that the Air Force lacked a reasonable basis to cancel the solicitation after selecting Source as the apparent successful offeror and that it should be awarded the contract under the RFP because it submitted the lowest acceptable offer.

We deny the protest.

The RFP was issued on September 21, 1989, pursuant to Office of Management and Budget (OMB) Circular No. A-76 in order to provide the Air Force with a cost comparison for purposes of determining whether it would be more economical to perform

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the required work in-house or by contract.^{1/} Pursuant to Federal Acquisition Regulation (FAR) § 32.705-1(a), the agency incorporated into the RFP the "Availability of Funds" clause^{2/} at FAR § 52.232-18, which provides that "[t]he government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made."

A number of proposals were submitted, discussions were held, and best and final offers (BAFO) were received on March 14, 1990. Based on the final evaluation, Source's offer was found to be the most advantageous to the government. On March 19, the agency requested that \$510,000--the approximate amount of Source's first year costs--be added to the agency's financial plan for fiscal year (FY) 1991. The agency then notified Source that it was the apparent successful offeror pending the completion of a satisfactory pre-award survey. Although the agency ultimately found that Source was responsible, the agency decided not to award the contract to Source, based on its conclusion that a complete revision of the RFP's performance work statement (PWS) was required due to anticipated budget reductions and organizational changes. As a result, the agency canceled the solicitation on August 27.

The Air Force states that the decision was proper based on the following considerations: (1) uncertainty regarding budgetary constraints, which ultimately would significantly reduce the services which could be procured; (2) the government furnished equipment (GFE) list in the RFP had changed significantly since the solicitation was issued; and (3) a reduction in the workload would more than likely materialize after an anticipated reorganization.^{3/} Source argues that

^{1/} OMB Circular No. A-76 establishes federal policy regarding commercial activities and sets forth procedures for determining whether commercial activities should be operated under contract by commercial sources or in-house using government facilities and personnel.

^{2/} The clause is inserted in solicitations when the contract will be chargeable to funds of the new fiscal year and the contracting action will be initiated before the funds are available.

^{3/} As a result of a Defense Management Review (DMR), it was determined that management and organizational changes would be undertaken at various Air Logistics Centers, including Hill AFB. At the time the solicitation was canceled, the

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the cancellation was unreasonable because there is no evidence to confirm that the reorganization or budget constraints will have the actual impact that the agency anticipates. Source contends that the cancellation is simply an attempt by the agency to circumvent the A-76 process.

In a negotiated procurement, the contracting officer has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. Cantu Serv., Inc., B-219998.9, B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306. Cancellation is appropriate where the agency finds that its needs are no longer accurately reflected by the RFP. Dynalelectron Corp., B-216201, May 10, 1985, 85-1 CPD ¶ 525.

Here, citing major changes to the services being procured, the base commander at Hill AFB initially requested cancellation of the solicitation on May 18. The commander stated that cancellation was required because anticipated organizational changes and significant manpower reductions resulting from the DMR would greatly affect the support and services reflected in the PWS. For example, the commander stated that it was uncertain whether the Visual Information Support Center at Hill AFB would be located in another directorate or if the Information Management Division would be eliminated or merged elsewhere. The commander also determined that the GFE list had changed significantly. In addition to the notification about the impact of the reorganization, the contracting personnel at Hill AFB later were advised in July that the anticipated FY 1991 budget would reflect funding reductions that would significantly affect the agency's ability to fund any contract under the solicitation. Specifically, the Air Force Logistics Command stated that the appropriations for audio-visual functions at the Air Logistics Centers, like Hill AFB, would be cut to one-third the current budget in FY 1991 and to 10 percent in FY 1992 and beyond.

We find that the cancellation was reasonably based on any one of the three considerations cited by the Air Force. For example, we have found that cancellation is appropriate where there is a lack of funding, see Cantu Serv., Inc., B-219998.9, B-233697, supra; where there is a significant change to the solicitation's GFE list, see D-K Assocs., Inc., 62 Comp. Gen. 129 (1983), 83-1 CPD 55; and where there is a significant reduction in the anticipated workload. See Dynalelectron Corp., B-216201, supra. Clearly, the contracting

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reorganization had not been fully implemented and is, in fact, still on-going.

officer acted reasonably in canceling the solicitation where, as here, all three factors were present.

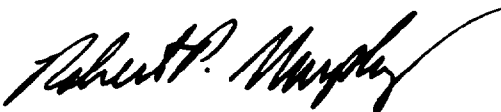
The protester argues that it was unreasonable for the Air Force to base the cancellation on the anticipated impact of the reorganization and the funding reductions because the perceived impact of both was based on "rumors" rather than "hard evidence." With regard to the budget constraints, the protester claims that over the past years, the threat of budget reductions has become a cliché and that the significant cuts that are anticipated never truly materialize to a point where services are reduced significantly. Source also contends that the planned reorganization would not necessarily affect the workload required because, for example, the contemplated photographic workload will not change simply because the photographic lab is moved from one organizational entity to another.

Notwithstanding the protester's view of the reasons underlying the Air Force's decision, the cancellation was reasonable at the time the decision was made. It is obvious that a budget reduction of approximately 33 percent would call for a reevaluation of Hill AFB's minimum needs and revision of the solicitation's PWS; these budget reduction concerns merely compounded the existing uncertainty concerning the impact that the planned reorganization would have on the workload. Contrary to the protester's characterization, the agency's concerns in these areas were not prompted by mere rumors. Rather, the contracting officials were specifically advised by the Air Force Logistics Command to expect drastic budget reductions, and the base commander reasonably raised the possibility of organizational and workload changes as the ongoing DMR reached completion. Although the precise impact could not be known, the relevant circumstances were sufficiently uncertain to justify the conclusion that the PWS no longer accurately reflected the agency's needs, and thus that cancellation was appropriate.

Contrary to the protester's suggestion, the contracting officer could not have opted to award a contract for a reduced requirement, because a modification of such magnitude that would reduce the scope of the contract by approximately 33 percent--the percentage of the budget reduction in FY 1991--would be tantamount to a cardinal change outside the general scope of the contract for which the competition was held. See Avtron Mfg., Inc., 67 Comp. Gen. 404 (1988), 88-1 CPD ¶ 458. Accordingly, we find that the contracting officer availed himself of the only prudent and reasonable solution--cancellation.

Source maintains that the Air Force canceled the solicitation--after finding Source responsible--as a last resort to circumvent the A-76 process. To support its position, the protester cites other cancellations of cost comparison studies at Hill AFB. Those cancellations are not probative, however, since each procurement action is a separate transaction, see Ferrite Eng'g Labs, B-222972, July 28, 1986, 86-2 CPD ¶ 122, and in this case we have found the cancellation to be reasonable. Further, the fact that the cancellation occurred after the pre-award survey was conducted, and not earlier, does not by itself show that the cancellation was improper; an agency properly may cancel a solicitation no matter when the information precipitating the cancellation arises, even if that is not until proposals are submitted and the protester has incurred costs in pursuing the award.^{4/} System-Analytics Group, B-233051, Jan. 23, 1989, 89-1 CPD ¶ 57; Dynalectron Corp., B-216201, supra. While it is unfortunate that Source may have incurred costs in pursuing the award, there is no basis for granting the protester's claim for costs where, as here, we do not find that the agency violated a law or regulation, but, rather, acted properly in canceling the solicitation. See 4 C.F.R. § 21.6(d)(2) (1990); SAC Management, Inc., B-219998.8, Sept. 14, 1988, 88-2 CPD ¶ 243.

The protest is denied.


for James F. Hinchman
General Counsel

4/ Since the RFP clearly advised offerors that funding had not been obtained prior to the issuance of the solicitation and that the award of a contract was subject to the availability of such funds, there is no evidence here that the Air Force unfairly induced them to submit proposals.